IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 893 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI @ DHAMO VIRJI KOLI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner No. 1

MR DP JOSHI, APP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/01/2002

ORAL JUDGEMENT

The petitioner came to be externed out of the territorial jurisdiction of the districts of Junagadh, Amreli, Porbandar, Rajkot City and Rajkot Rural for a period of two years by virtue of an order passed by the

Sub-Divisional Magistrate, Junagadh on August 07, 2001. The petitioner seeks to challenge the said order under Article 226 of the Constitution of India on various grounds stated in the petition.

2. A notice came to be served on the petitioner as required under Section 59 of the Bombay Police Act to show case as to why he should not be externed from the above said districts. The allegations in the notice are that he was involved in five I.P.C. cases and one Chapter case. It was indicated that the five I.P.C. cases were pending in the Court. The details of the cases can be stated as under :

Sr. No.	Police Station	C.R. No.	Section & Date	Disposal detail
1.	A Division Junagadh	I 61/99	IPC Sec.358,506(2) 114, B.P. Act - 135	Court pending
2.	A Division Junagadh	I 174/2000	IPC Sec.323,504, 506(2),354,114	Court pending
3.	A Division, Junagadh	II 201/2000	IPC Sec.323,504 506(2), 114	Court pending
4.	A Division, Junagadh	II 202/2000	IPC Sec.323,504, 506(2),114, B.P. Act - 135	Court pending
5.	A Division, Junagadh	II 203/2000	IPC Sec.323,504, 506(2), B.P.Act - 135	Court pending
6.	A Division, Junagadh	Chapter Case No.25/2000, Cr.P.C. 110 EH.		PROVED

3. It was also alleged that he is required to be externed from contiguous districts as he is likely to pursue his activities from those contiguous districts, if he is not externed therefrom. The petitioner gave reply to the said show cause notice (Annexure-'B') denying the allegations. According to the petitioner, the cases at Sr. Nos. 2,3,4 and 5 in the above table were concluded and he has been acquitted therein. He placed relevant documents in support of his version. The same came to be considered by the authority and the authority found that the cases were disposed of and the accused was acquitted

on account of the compromise settlement. However, since the case at Sr. No.1, in the above table was not shown to have been settled, the authority took it as Court pending. The authority took into consideration an F.I.R. registered vide C.R.No.I 162/2001 dated 17.06.2001 for the offences punishable under Sections 354, 504, 506(2) and 114 of I.P.C. and Section 135 of the Bombay Police Act and ultimately passed the impugned order.

4. The impugned order is sought to be challenged by the learned advocate Mr.Prajapati mainly on two grounds. Firstly, it is submitted that the externing authority has considered the cases registered at C.R.No.I 162/2001 for which no notice as envisaged under Section 59 of the Bombay Police Act has been given. The order is, therefore, passed on a material for which no opportunity to explain was given. The second fold of argument of Mr.Prajapati is that the petitioner has been externed from contiguous districts and there is no material to indicate that the petitioner has roots in those districts for continuing his alleged activities. He, therefore, submits that the order would be vitiated and may be quashed and set aside.

5. The petition is opposed to by learned A.P.P. Mr.D.P.Joshi.

6. On close scrutiny of the notice under section 59 of the Bombay Police Act issued to the petitioner and the impugned order, it is abundantly clear that C.R.No.I 162/2001 is considered and relied upon by the externing authority while passing the order finds no place in the show cause notice issued under Section 59 of the Bombay Police Act. The petitioner had therefore no opportunity of meeting with these allegations. The authority could not have placed reliance on this material. The order, therefore, would stand vitiated. It is also clear from the grounds of externment as well as the order that there is no material to support the finding of the externing authority that the petitioner has connection or roots in the contiguous districts. There is no material for recording the satisfaction that the petitioner may pursue his activities by remaining in contiguous districts and therefore, he is required to be externed from those districts. This would vitiate the order of externment. In this regard, reference may be had to the decision of this Court in the case of Mustufamiya Pirsahedmiya Saiyed & another Vs. State of Gujarat, 1999 (1) G.L.H. 913.

7. For the forgoing reasons, the petition deserves to be allowed and the same is allowed. The order of

externment passed by the Sub-Divisional Magistrate, Junagadh on August 07, 2001 in Externment Case No.5 of 2001, externing the petitioner-Ramesh @ Dhamo Virji Koli is hereby quashed and set aside. Rule is made absolute. Direct service permitted. Sd/-

[A.L.Dave, J]

'Bhavesh'